

REMARKS

Reconsideration of the rejection and reexamination are requested. Claims 1-43 and 50-69 remain in the application. Claims 44-49 have been canceled without prejudice. Claims 33, 54 and 62 have been amended. No new matter has been added. The basis for the amendment to claims 33, 54 and 62 may be found in the specification, e.g., in the first sentence of paragraph [0041].

The Examiner has made a restriction requirement under 35 U.S.C. § 121 between two groups of claims. Applicants confirm the provisional election of Group I, claims 1-43 and 50-69, drawn to a bag. Unelected Group II claims have been cancelled, without prejudice, preserving the right to file a divisional application therefor.

Information Disclosure Statement:

Attached is a copy of the return receipt postcard indicating receipt by the U.S. Patent Office of the 1449 list in the April 25, 2005 submission. A duplicate list of the art previously cited on April 25, 2005 is included herewith to complete the Information Disclosure Statement filing. An additional Information Disclosure Statement with references is also submitted herewith. The art cited is requested to be made of record.

The 35 U.S.C § 112 Rejection:

Claims 33, 54 and 62 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 33 and 62 have been amended to recite values and are now believed to be definite as defined by the statute. Claim 54 has also been amended to correct a typographical error to make the claim dependent upon claim 53. In view of the amendments, these claims are submitted to meet all requirements of 35 U.S.C. § 112, and the rejection is requested to be withdrawn.

The 35 U.S.C § 103 Rejection:

The Examiner has rejected claims 1-32, 34-43, 50-53, 55-61 and 63-69 under 35 U.S.C. § 103 for obviousness, citing as evidence U.S. Patent No. 5,888,648 (Donovan et al.) in view of U.S. Patent No. 6,221,410 (Ramesh et al.).

U.S. Patent No. 5,888,648 (Donovan et al.) discloses a hermetically sealable multilayer film for use in vertical or horizontal form/fill/seal packaging (VFFS or HFFS). Tubes for VFFS or HFFS are produced from the disclosed film using a lap seal or fin seal. Donovan et al. are concerned with solving the tunneling problem associated with folding stiff films to provide a hermetic sealable film suitable for both HFFS and VFFS in a film that is peelable and reclosable at the contact surface of a seal.

The Examiner admits that “Donovan et al. fails to teach that the polymeric film is heat shrinkable.”

As an initial issue, Applicants submit that the Donovan et al. reference is not in the field of endeavor of the present invention and should not be used as a primary reference. The present invention relates to heat shrinkable films which is a well-established art. Heat shrinkable films are made by well-known processes involving stretching of film either uniaxially or biaxially under process conditions sufficient to orient the polymeric molecules in a manner designed to produce a film that will shrink with force at temperatures below the melting point of the main polymeric film constituents. The films of Donovan et al. are all designed to make bags and pouches on high speed HFFS or VFFS equipment. There is no teaching of any utility or suitability to make heat shrinkable bags for packaging such items as frozen pizzas, cheese, poultry, fresh red meat, processed meat, wooden blinds or CDs.

Furthermore, Donovan et al.’s film refers only to peel systems involving a heat seal surface to heat seal surface peel interface and teaches away from buried layer peeling systems such as that claimed in claims 22, 23, 68 and 69. In the present invention, certain embodiments use tie layers for a peelable seal, and in the peeling process, the films separate, not at the heat seal interface, but at a buried tie layer which is designed to break apart or to separate upon application of a certain force, causing a peelable seal.

Claims 18-20 refer to specific seal strengths for which the Examiner has offered no evidence to suggest that they are the same as those found in either Donovan et al. or Ramesh et al., both of which the Examiner admits do not teach seal strength values.

The Examiner has misunderstood the term “polybutylene.” Claims 24, 25, 31, 53, 60 and 61 of the present invention all require use of “polybutylene” in a tie layer. As described in paragraph [0031] of Applicants’ published specification, the term “polybutylene” means that a majority of its polymeric units are derived from butene-1. The Examiner relies in error upon

Donovan et al.'s teaching of Chisso 7701 terpolymer. This ethylene-propylene-butylene (EPB) terpolymer Chisso 7701 is not a polybutylene. U.S. Patent No. 5,691,043 assigned to Mobil discloses Chisso 7701 as only having a butylene content of 3.8% (see Col. 13, lines 1-2). Therefore, the material cited by the Examiner is not polybutylene.

Also regarding claims 23 and 69, the Examiner states that "...the tie layer, item 63, of Donovan et al. is permanently bonded to the outer heat sealing layer, item 61, and peelably bonded to the core layer, item 65 (Figure 6 and col. 11, lines 18-30)" (October 6, 2005, Official Action, page 8, penultimate paragraph, emphasis added). However, there is nothing in the citation to support the Examiner's allegation that the tie layer is peelably bonded to the core layer. There is no mention or reference to peeling or peel properties whatsoever, and the Examiner is mistaken.

It is submitted that the above mistaken interpretation of Donovan et al. by the Examiner is evidence of the application of impermissible hindsight in his analysis.

U.S. Patent No. 6,221,410 (Ramesh et al.) disclose a heat shrinkable back-seamed casing film useful for packaging meat, e.g., in cook-in applications. This patent is primarily concerned with the problem of making a seamed casing of uniform diameter without wrinkles causing premature shrinkage along the seam due to the back seam heat sealing process. A uniform diameter is desired in the production of traditional circular cross-section tubular meat products such as bologna, liver sausage and the like. The ends of the casings are typically closed by clips such as illustrated in Figure 9 of Ramesh et al. Ramesh et al. have only one reference to the suitability of its film for making bags, stating at Col. 26, lines 21-25, that the films are suited to many different forms of packaging "...including shirred casings, bags, etc."

The Examiner makes some comments regarding Ramesh et al. which are not understood, and clarification is requested. The reference in paragraph 11 of the Official Action, e.g., on page 5, to "...easily opened as taught by Ramesh et al. at Col. 3, lines 8-9..." is not understood. Col. 3, lines 8-9, of Ramesh et al. does not refer in any way to opening features.

It is submitted that the Examiner's argument that the heat sealable films of Ramesh et al. equate to the oriented polypropylene film of Donovan et al. is misplaced. Donovan et al. does not mention formation of oriented polypropylene, but also refers to orienting in an oven. It is submitted that the films of Donovan et al. refer to the typical films sold by Mobil which are annealed by heat to dimensionally stabilize the films and avoid shrinkage. See, e.g., the enclosed

nine pages describing Exxon Mobil OPP film from its website:

http://www.exxonmobilchemical.com/Public_Products/OPPFilms/oriented_PP_Films.

The Examiner makes several other erroneous statements in the Official Action. For example, on page 2, the Examiner, regarding claim 7, alleges that “any piece of tape is a pull flap, so the tape of the bag taught by Donovan et al. and Ramesh et al. includes a pull flap.” However Donovan et al. do not refer anywhere to a “tape” and the Examiner has provided no specific citation in either Donovan et al. or Ramesh et al. in support of his allegation. Similarly, regarding claim 9, the reference to Figure 1 of Ramesh et al. to support the allegation that Ramesh et al. teach a pull flap is denied. It is submitted that Figure 1 shows no such thing. There is no reference in Ramesh et al. to any pull tab and any extension of material beyond a seal area depicted in Figure 1 is too short to constitute or be used as a pull tab.

Another erroneous statement by the Examiner is the argument that “Ramesh et al. include a peelable system” (page 7, paragraph 4). Ramesh et al. are void of any description, disclosure, reference or suggestion of any peeling system to open or separate a film structure to open a container.

There is no motivation or suggestion to combine the two references cited as evidence by the Examiner. The Ramesh et al. reference is a teaching concerned with making a back-seamed heat shrinkable casing, but it has no discussion regarding any peel open system. The Donovan et al. reference has no description of heat shrinkability. Its oriented films are described in a manner that would indicate that they are processed in a manner consistent with the commercially available Exxon Mobil annealed oriented polypropylene (OPP) films. Nothing in the Donovan et al. reference or the Ramesh et al. would suggest that these teachings should be combined. If they were to be combined, absent Applicants’ teachings, it is just as likely that the resultant product would be a non-peelable, annealed, non-heat shrinkable casing having good dimensional stability with hermetic seals avoiding the tunnel problem and capable of avoiding wrinkles in the back-seam seal area during tube formation.

In view of the above, it is submitted that a prima facie case of obviousness has not been made and that there is clear evidence of the use of impermissible hindsight in the combination of the references and selection of certain features thereof. It is further submitted that the claims, as amended, meet the requirements of § 112 and that all the rejections should be withdrawn.

PATENT

The application is now believed to be in condition for allowance. It is requested that the rejections be withdrawn, and the claims, as amended, be allowed.

The Commissioner is hereby authorized to charge payment of any fees associated with this communication under 37 C.F.R. § 1.16 and § 1.17, or credit any overpayment, to Deposit Account No. 502023. A duplicate copy of this document is attached for your convenience.

Respectfully submitted,

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Date

Cedric M. Richeson
Cedric M. Richeson
Registration No. 29,339

Bemis Company, Inc.
Patent / Legal Department
2200 Badger Avenue
Oshkosh, Wisconsin 54904
Telephone: (920) 303-7812
Facsimile: (920) 303-7810
Email: cmricheson@bemis.com